IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL

Criminal Misc. Application No. 294 of 2005

Bihari Lal aged about 64 years
S/o Sri Madia Ram
Village Saundari Patti Palkot
Tehsil Narendra Nagar
District Tehri Garhwal .....Applicant

Vs

1. Surat Singh Sajwan S/o Sri Indra Singh Sajwan
   R/o Village Palkot
   Patti Palkot, Tehsil Narendra Nagar
   District Tehri Garhwal
2. Chief Judicial Magistrate, New Tehri
   Tehri Garhwal
3. State of Uttaranchal ...Respondents

Sri J.P. Joshi, learned counsel for the petitioner
Learned A.G.A. for the State

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the petitioner-Bihari Lal for quashing the Criminal Case No. 408 of 2004 State Vs Bihari Lal under Sections 409, 420, 468, 471 I.P.C. pending in the court of Chief Judicial Magistrate, Tehri, New Tehri.

2- Brief facts of the prosecution case are that the First Information Report was lodged against the petitioner under Section 409, 420, 468, 471 I.P.C. The police investigated the matter and thereafter submitted the final report against the petitioner. A protest petition was filed before the concerned Magistrate against that final report.

3- The Magistrate after having considered the protest petition came to the conclusion that there was a prima-facie case against the petitioner and took the cognizance in the matter. Thereafter the chargesheet was submitted against the

petitioner for the aforesaid offence and charges were also framed by the trial court. Thus the petitioner has filed the petition for quashing the entire proceedings of the criminal Case No. 408 of 2004 State Vs Bihari Lal under Sections 409, 420, 468, 471 I.P.C. pending in the court of Chief Judicial Magistrate, Tehri, New Tehri.

4. After having considered the arguments advanced by the learned counsel for the parties, I am of the view that there is no abuse of process of court in this case. The averments made in the petition are the disputed question of fact which can be judged and assessed by the trial court where the evidence is yet to be adduced. Any judgment rendered by me would amount to premature judgment especially under the circumstance when the evidence is still to be adduced before the trial judge. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this stage.

5. I do not find any ground for quashing the criminal proceedings at this stage. Therefore, the petition lacks merit and is liable to be dismissed.

6. Accordingly, the petition is dismissed.

(B.C. Kandpal, J.)

07-08-2006
ASWAL